

Administrative Procedures – Proposed Coversheet

Instructions:

In accordance with Title 3 Chapter 25 of the Vermont Statutes Annotated and the “Rule on Rulemaking” adopted by the Office of the Secretary of State, this proposed filing will be considered complete upon the submission and acceptance of the following components:


- Proposed Rule Coversheet
- Adopting Page
- Economic Impact Statement
- Public Input Statement
- Scientific Information Statement (if applicable)
- Incorporated by Reference Statement (if applicable)
- Clean text of the rule (Amended text without annotation)
- Annotated text (Clearly marking changes from previous rule)

All forms requiring a signature shall be original signatures of the appropriate adopting authority or authorized person, and all filings are to be submitted at the Office of the Secretary of State, no later than 3:30 pm on the last scheduled day of the work week.

The data provided in text areas of the proposed coversheet form will be used to generate a notice of rulemaking in the newspapers of record. Publication of notices will be charged back to the promulgating agency based on the word count of the notices.

Certification Statement: As the adopting Authority of this rule (see 3 V.S.A. § 801 (b) (11) for a definition), I approve the contents of this filing entitled:

Rule Title: Inmate Access to Publications

, on 2/14/18.
(signature) (date)

Printed Name and Title:

Martha Maksym, Deputy Secretary of Human Services for Al Gobeille, Secretary, Agency of Human Services

RECEIVED BY: _____

- ☐ Proposed Rule Coversheet
- ☐ Adopting Page
- ☐ Economic Impact Statement
- ☐ Public Input Statement
- ☐ Scientific Information Statement (if applicable)
- ☐ Incorporated by Reference Statement (if applicable)
- ☐ Clean text of the rule (Amended text without annotation)
- ☐ Annotated text (Clearly marking changes from previous rule)
- ☐ ICAR Approval received by E-mail.

1. TITLE OF RULE FILING:

Inmate Access to Publications

2. ADOPTING AGENCY:

Agency of Human Services - Department of Corrections

3. PRIMARY CONTACT PERSON:

(A PERSON WHO IS ABLE TO ANSWER QUESTIONS ABOUT THE CONTENT OF THE RULE).

Name: Matthew Nault

Agency: Agency of Human Services - Department of Corrections

Mailing Address: 280 State Drive, Waterbury, VT 05671-2000

Telephone: 802 241 - 0068 Fax: 802 241 - 0020

E-Mail: matthew.nault@vermont.gov

Web URL *(WHERE THE RULE WILL BE POSTED)*:

<http://corrections.vermont.gov/about/policies>

4. SECONDARY CONTACT PERSON:

(A SPECIFIC PERSON FROM WHOM COPIES OF FILINGS MAY BE REQUESTED OR WHO MAY ANSWER QUESTIONS ABOUT FORMS SUBMITTED FOR FILING IF DIFFERENT FROM THE PRIMARY CONTACT PERSON).

Name: Christine Cowart

Agency: Agency of Human Services - Department of Corrections

Mailing Address: 280 State Drive, Waterbury, VT 05671-2000

Telephone: 802 477 - 3850 Fax: 802 241 - 0020

E-Mail: christine.cowart@vermont.gov

5. RECORDS EXEMPTION INCLUDED WITHIN RULE:

(DOES THE RULE CONTAIN ANY PROVISION DESIGNATING INFORMATION AS CONFIDENTIAL; LIMITING ITS PUBLIC RELEASE; OR OTHERWISE EXEMPTING IT FROM INSPECTION AND COPYING?) No

IF YES, CITE THE STATUTORY AUTHORITY FOR THE EXEMPTION:

PLEASE SUMMARIZE THE REASON FOR THE EXEMPTION:

6. LEGAL AUTHORITY / ENABLING LEGISLATION:

(THE SPECIFIC STATUTORY OR LEGAL CITATION FROM SESSION LAW INDICATING WHO THE ADOPTING ENTITY IS AND THUS WHO THE SIGNATORY SHOULD BE. THIS SHOULD BE A SPECIFIC CITATION NOT A CHAPTER CITATION).

28 V.S.A. § 102(c)(1)

7. CONCISE SUMMARY (150 WORDS OR LESS):

The Vermont Department of Corrections (DOC) is proposing a revision and renaming of APA Rule #10-029, Inmate Possession of Printed Materials, to ensure that the DOC's restriction of inmates' access to publications do not unnecessarily deny inmates access and complies with the First Amendment. The definition of "nudity" in the current rule is overly broad and unnecessarily restricts inmates' access to some publications. The proposed rule more narrowly defines "nudity."

8. EXPLANATION OF WHY THE RULE IS NECESSARY:

Inmates have a First Amendment right to access publications. However, the DOC may restrict inmates' access to publications if the restriction is reasonably related to a legitimate penological interest, such as maintaining safety, security, orderly operation, and discipline in correctional facilities. A revision and renaming of the rule is necessary to ensure that the DOC's restriction of inmates' access to publications complies with the First Amendment.

9. LIST OF PEOPLE, ENTERPRISES AND GOVERNMENT ENTITIES AFFECTED BY THIS RULE:

Inmates in the custody of DOC;
DOC;
Publishers

10. BRIEF SUMMARY OF ECONOMIC IMPACT (150 WORDS OR LESS):

As this rule clarifies the guidelines regarding what materials are allowable, it may reduce staff time that is currently spent reviewing publications. As this will not represent a reduction in total costs, there does not appear to be any economic impact of this proposed rule.

11. A HEARING IS SCHEDULED .

12. HEARING INFORMATION

(THE FIRST HEARING SHALL BE NO SOONER THAN 30 DAYS FOLLOWING THE POSTING OF NOTICES ONLINE).

IF THIS FORM IS INSUFFICIENT TO LIST THE INFORMATION FOR EACH HEARING PLEASE ATTACH A SEPARATE SHEET TO COMPLETE THE HEARING INFORMATION NEEDED FOR THE NOTICE OF RULEMAKING.

Date: 4/12/2018

Time: 11:00 AM

Street Address: 280 State Drive, Waterbury, VT

Zip Code: 05671-2000

Date:

Time: AM

Street Address:

Zip Code:

Date:

Time: AM

Street Address:

Zip Code:

Date:

Time: AM

Street Address:

Zip Code:

13. DEADLINE FOR COMMENT (NO EARLIER THAN 7 DAYS FOLLOWING LAST HEARING):

4/19/2018

14. KEYWORDS (PLEASE PROVIDE AT LEAST 3 KEYWORDS OR PHRASES TO AID IN THE SEARCHABILITY OF THE RULE NOTICE ONLINE).

Printed Materials

Publications

Inmates

Prisoner

Correctional Facilities

Publishers

Magazines

Books

Nudity

Administrative Procedures – Adopting Page

Instructions:

This form must be completed for each filing made during the rulemaking process:

- Proposed Rule Filing
- Final Proposed Filing
- Adopted Rule Filing
- Emergency Rule Filing

Note: To satisfy the requirement for an annotated text, an agency must submit the entire rule in annotated form with proposed and final proposed filings. Filing an annotated paragraph or page of a larger rule is not sufficient. Annotation must clearly show the changes to the rule.

When possible the agency shall file the annotated text, using the appropriate page or pages from the Code of Vermont Rules as a basis for the annotated version. New rules need not be accompanied by an annotated text.

1. TITLE OF RULE FILING:

Inmate Access to Publications

2. ADOPTING AGENCY:

Agency of Human Services - Department of Corrections

3. AGENCY REFERENCE NUMBER, IF ANY:

4. TYPE OF FILING (*PLEASE CHOOSE THE TYPE OF FILING FROM THE DROPDOWN MENU BASED ON THE DEFINITIONS PROVIDED BELOW*):

- **AMENDMENT** - Any change to an already existing rule, even if it is a complete rewrite of the rule, it is considered an amendment as long as the rule is replaced with other text.
- **NEW RULE** - A rule that did not previously exist even under a different name.
- **REPEAL** - The removal of a rule in its entirety, without replacing it with other text.

This filing is **AN AMENDMENT OF AN EXISTING RULE** .

5. LAST ADOPTED (*PLEASE PROVIDE THE SOS LOG#, TITLE AND LAST DATE OF ADOPTION FOR THE EXISTING RULE*):

SOS Rule Log #10-029, CVR 13-130-007, Inmate Possession of Printed Materials, August 4, 2010

Administrative Procedures – Economic Impact Statement

Instructions:

In completing the economic impact statement, an agency analyzes and evaluates the anticipated costs and benefits to be expected from adoption of the rule. This form must be completed for the following filings made during the rulemaking process:

- Proposed Rule Filing
- Final Proposed Filing
- Adopted Rule Filing
- Emergency Rule Filing

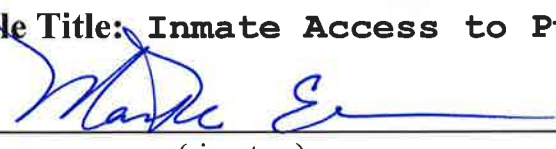
Rules affecting or regulating public education and public schools must include cost implications to local school districts and taxpayers in the impact statement (see 3 V.S.A. § 832b for details).

The economic impact statement also contains a section relating to the impact of the rule on greenhouse gases. Agencies are required to explain how the rule has been crafted to reduce the extent to which greenhouse gases are emitted (see 3 V.S.A. § 838(c)(4) for details).

All forms requiring a signature shall be original signatures of the appropriate adopting authority or authorized person.

Certification Statement: As the adopting Authority of this rule (see 3 V.S.A. § 801 (b) (11) for a definition), I conclude that this rule is the most appropriate method of achieving the regulatory purpose. In support of this conclusion I have attached all findings required by 3 V.S.A. §§ 832a, 832b, and 838(c) for the filing of the rule entitled:

Rule Title: Inmate Access to Publications

 _____, on 2/14/18
(signature) (date)

Printed Name and Title:

Martha Maksym, Deputy Secretary of Human Services for Al Gobeille, Secretary, Agency of Human Services

BE AS SPECIFIC AS POSSIBLE IN THE COMPLETION OF THIS FORM, GIVING FULL INFORMATION ON YOUR ASSUMPTIONS, DATABASES, AND ATTEMPTS TO GATHER OTHER INFORMATION ON THE NATURE OF THE COSTS AND BENEFITS INVOLVED. COSTS AND BENEFITS CAN INCLUDE ANY TANGIBLE OR INTANGIBLE ENTITIES OR FORCES WHICH WILL MAKE AN IMPACT ON LIFE WITHOUT THIS RULE.

1. TITLE OF RULE FILING:

Inmate Access to Publications

2. ADOPTING AGENCY:

Agency of Human Services - Department of Corrections

3. CATEGORY OF AFFECTED PARTIES:

LIST CATEGORIES OF PEOPLE, ENTERPRISES, AND GOVERNMENTAL ENTITIES POTENTIALLY AFFECTED BY THE ADOPTION OF THIS RULE AND THE ESTIMATED COSTS AND BENEFITS ANTICIPATED:

Inmates in the custody of the Department of Corrections;

The Department of Corrections;

Publishers

4. IMPACT ON SCHOOLS:

INDICATE ANY IMPACT THAT THE RULE WILL HAVE ON PUBLIC EDUCATION, PUBLIC SCHOOLS, LOCAL SCHOOL DISTRICTS AND/OR TAXPAYERS:

No Impact

5. COMPARISON:

COMPARE THE ECONOMIC IMPACT OF THE RULE WITH THE ECONOMIC IMPACT OF OTHER ALTERNATIVES TO THE RULE, INCLUDING NO RULE ON THE SUBJECT OR A RULE HAVING SEPARATE REQUIREMENTS FOR SMALL BUSINESS:

As this rule clarifies the guidelines regarding what materials are allowable, it may reduce staff time that is currently spent reviewing publications. As this will not represent a reduction in total costs, there does not appear to be any economic impact of this proposed rule.

6. FLEXIBILITY STATEMENT:

COMPARE THE BURDEN IMPOSED ON SMALL BUSINESS BY COMPLIANCE WITH THE RULE TO THE BURDEN WHICH WOULD BE IMPOSED BY ALTERNATIVES CONSIDERED IN 3 V.S.A. § 832a:

No Impact

7. GREENHOUSE GAS IMPACT: *EXPLAIN HOW THE RULE WAS CRAFTED TO REDUCE THE EXTENT TO WHICH GREENHOUSE GASES ARE EMITTED, EITHER DIRECTLY OR INDIRECTLY, FROM THE FOLLOWING SECTORS OF ACTIVITIES:*

a. TRANSPORTATION —

IMPACTS BASED ON THE TRANSPORTATION OF PEOPLE OR PRODUCTS (e.g., “THE RULE HAS PROVISIONS FOR CONFERENCE CALLS INSTEAD OF TRAVEL TO MEETINGS” OR “LOCAL PRODUCTS ARE PREFERENTIALLY PURCHASED TO REDUCE SHIPPING DISTANCE.”):

No Impact

b. LAND USE AND DEVELOPMENT —

IMPACTS BASED ON LAND USE AND DEVELOPMENT, FORESTRY, AGRICULTURE ETC. (e.g., “THE RULE WILL RESULT IN ENHANCED, HIGHER DENSITY DOWNTOWN DEVELOPMENT.” OR “THE RULE MAINTAINS OPEN SPACE, FORESTED LAND AND /OR AGRICULTURAL LAND.”):

No Impact

c. BUILDING INFRASTRUCTURE —

IMPACTS BASED ON THE HEATING, COOLING AND ELECTRICITY CONSUMPTION NEEDS (e.g., “THE RULE PROMOTES WEATHERIZATION TO REDUCE BUILDING HEATING AND COOLING DEMANDS.” OR “THE PURCHASE AND USE OF EFFICIENT ENERGY STAR APPLIANCES IS REQUIRED TO REDUCE ELECTRICITY CONSUMPTION.”):

No Impact

d. WASTE GENERATION / REDUCTION —

IMPACTS BASED ON THE GENERATION OF WASTE OR THE REDUCTION, REUSE, AND RECYCLING OPPORTUNITIES AVAILABLE (e.g., “THE RULE WILL RESULT IN REUSE OF PACKING MATERIALS.” OR “AS A RESULT OF THE RULE, FOOD AND OTHER ORGANIC WASTE WILL BE COMPOSTED OR DIVERTED TO A ‘METHANE TO ENERGY PROJECT’.”):

No Impact

e. OTHER —

IMPACTS BASED ON OTHER CRITERIA NOT PREVIOUSLY LISTED:

No Impact

Administrative Procedures – Public Input Statement

Instructions:

In completing the public input statement, an agency describes what it did do, or will do to maximize the involvement of the public in the development of the rule. This form must be completed for the following filings made during the rulemaking process:

- Proposed Rule Filing
- Final Proposed Filing
- Adopted Rule Filing
- Emergency Rule Filing

1. TITLE OF RULE FILING:

Inmate Access to Publications

2. ADOPTING AGENCY:

Agency of Human Services - Department of Corrections

3. PLEASE LIST THE STEPS THAT HAVE BEEN OR WILL BE TAKEN TO MAXIMIZE PUBLIC INVOLVEMENT IN THE DEVELOPMENT OF THE PROPOSED RULE:

The Vermont Department of Corrections (DOC) will hold a public hearing and post notice of the proposed amendment of the rule on its website to solicit feedback from the public.

A printed notice of the proposed amendment of the rule will be kept in all the DOC law libraries and made available to inmates upon request to the Inmate Law Librarian, Inmate Legal Assistant, or any other law library staff. A comment form will also be made available to inmates, on which they may submit comments to law library staff. Each Vermont correctional facility will make an announcement to all inmates that a copy of the notice of the proposed amendment of the rule is available to them, in the law library for review and comment.

4. BEYOND GENERAL ADVERTISEMENTS, PLEASE LIST THE PEOPLE AND ORGANIZATIONS THAT HAVE BEEN OR WILL BE INVOLVED IN THE DEVELOPMENT OF THE PROPOSED RULE:

DOC will ensure that staff and inmates have the opportunity to review and comment on the repeal of the Rule if they wish to do so. DOC will notify the Prisoners' Rights Office, in the Vermont Office of the

Defender General, of the proposed repeal, so the Office may also review and comment on the proposal.

280 STATE DRIVE
WATERBURY, VERMONT 05671-1000



OFFICE OF THE SECRETARY
TEL: (802) 241-0440
FAX: (802) 241-0450

AL GOBEILLE, SECRETARY
MARTHA MAKSYM, DEPUTY SECRETARY

STATE OF VERMONT
AGENCY OF HUMAN SERVICES


MEMORANDUM

TO: Jim Condos, Secretary of State

FROM: Al Gobeille, Secretary, Agency of Human Services

DATE: Tuesday, January 17, 2017

SUBJECT: Signatory Authority for Purposes of Authorizing Administrative Rules



I hereby designate Deputy Secretary of Human Services Martha Maksym as signatory to fulfill the duties of the Secretary of the Agency of Human Services as the adopting authority for administrative rules as required by Vermont's Administrative Procedure Act, 3 V.S.A. § 801 et seq.

Cc: Martha Maksym

13 130 007. INMATE ACCESS TO PUBLICATIONS

Section 1. Authority.

28 V.S.A. § 102(c)(1).

Section 2. Purpose.

The Vermont Department of Corrections (DOC) is responsible for maintaining safety, security, and order at the correctional facilities and providing programs of treatment and rehabilitation for inmates. Publications that contain depictions of nudity or sexually explicit images interfere with its ability to maintain safe, secure, and orderly correctional facilities and to rehabilitate and treat inmates. The purpose of this rule is to establish standards for DOC staff to determine whether inmates shall be denied access to publications because they interfere with DOC's ability to maintain safe, secure, and orderly correctional facilities and to rehabilitate and treat inmates.

Section 4. Definitions.

As used in this Rule, "nudity" means a pictorial depiction where genitalia, or the areola or nipple of female breasts, are exposed.

As used in this Rule, "publication" means a book, booklet, pamphlet, or similar document, or a single issue of a magazine, periodical, newsletter, newspaper, plus such other materials addressed to a specific inmate such as advertising brochures, flyers, and catalogs.

As used in this Rule, "sexually explicit" means a pictorial depiction of actual or simulated sexual acts, including sexual intercourse, oral sex, or masturbation. Written descriptions of sexual acts are not sexually explicit.

Section 5. Policy.

GENERAL PUBLICATION GUIDELINES

DOC staff shall not provide inmates with personally-acquired publications of any type.

Inmates may request and have access to magazines, newspapers, softcover books, and other publications sent directly from publishers or commercial distributors. In addition, inmates may receive:

1. Educational materials, as authorized by a staff member of the Community High School of Vermont (CHSVT), related to a course or coursework in which the inmate is enrolled;
2. Religious publications provided by the facility Volunteer Services Coordinator (VSC) or an approved representative of an inmate's faith;
3. Legal texts and publications approved by request to the Superintendent or designee; and
4. Legal materials, as authorized by the Legal Education Director.

Inmates shall not be permitted to have hardcover books, with the exception of educational texts.

ORDERING PUBLICATIONS

Inmates may access publications by making a written request or by having family or friends order them.

1. Inmate requests to order a publication may be denied in cases when:
 - a. The inmate is not able to pay for the desired materials;
 - b. The inmate is not expected to be housed at the facility long enough to receive the publication; or
 - c. The requested materials are prohibited by this Rule.
2. Family or friends may order publications for an inmate only if:
 - a. The publication is mailed directly from the publisher or commercial distributor;
 - b. The publication is not prohibited by this Rule; and
 - c. The publication is not ordered using a "Cash on Delivery (COD)" or "Bill Me Later" option charged to the inmate.

PROHIBITED PUBLICATIONS

The DOC prohibits publications that: pose a threat to the safety, security, or orderly operation of the correctional facility; might facilitate criminal activity; or contain nudity or sexually explicit material.

Guidelines for Reviewing Publications

All publications sent directly to inmates from publishers or commercial distributors shall be reviewed by a staff member to identify prohibited content. The following guidelines shall be used when determining if a publication should be prohibited:

1. The DOC shall not reject a publication solely because its content is religious, philosophical, political, social, sexual, or unpopular or repugnant.
 - a. Each issue of a publication shall be reviewed individually.
 - b. No publication shall be prohibited without review.
2. The DOC may reject a publication only if it determines it will interfere with the safety, security, or orderly operation of the correctional facility, or if it might facilitate criminal activity. Publications may be rejected if they meet one of the following criteria:
 - a. It depicts or describes procedures for the construction or use of weapons, ammunition, bombs, or incendiary devices;
 - b. It depicts, encourages, or describes methods of escape from correctional facilities, or contains blueprints, drawings, or similar descriptions or depictions of correctional facilities;
 - c. It depicts or describes procedures for the brewing of alcoholic beverages or the manufacture of drugs;
 - d. It is written in code;

- 1 e. It depicts, describes, or encourages activities which may lead to the use of physical
- 2 violence or group disruption;
- 3 f. It encourages or provides instruction for the commission of criminal activity;
- 4 g. It depicts nudity or sexually explicit material; or
- 5 i. Medical, educational, or anthropological materials do not violate this restriction and
- 6 may be permitted.
- 7 ii. Materials from gay, lesbian, bisexual, or transgender rights organizations that do not
- 8 contain nudity or sexually explicit material do not violate this restriction and may be
- 9 permitted.
- 10 iii. Written descriptions of sexual acts do not violate this restriction.
- 11 h. Its content will interfere with the safety, security, or orderly operation of the correctional
- 12 facility.
- 13 3. When reviewing religious materials, staff shall refer to the DOC administrative directive on
- 14 religious services.
- 15 4. The DOC shall establish a review and appeals process for the disapproval of publications.
- 16 This process shall require the DOC to notify the inmate and publisher whenever a publication
- 17 is disapproved.
- 18 a. These notifications shall include an explanation of why the publication was disapproved.
- 19 b. The notification to the publisher shall inform the publisher that they may appeal the
- 20 decision to the Superintendent or designee.
- 21

13 130 007. INMATE POSSESSION OF PRINTED MATERIALS ACCESS TO
PUBLICATIONS

—Section 1. Authority.

28 V.S.A. §§101(1) & (5), 102(c)(1), 802(a).

Section 2. Purpose.

The Vermont Department of Corrections permits an inmate in its custody to subscribe to or to receive printed materials, including publications. The Department recognizes the necessity of limits on offenders' access to printed materials that are reasonably related to the advancement of legitimate penological interests such as security, discipline, rehabilitation, public safety, or good order of the institution. This administrative rule establishes standards and procedures, parallel to those in 28 CFR §540.70, et seq. (2007), which the Department will use in determining whether offenders may possess printed materials received from sources outside a correctional facility. This proposed rule amends current Department Rule #79-25, Mail (Policy #965), which was adopted 01/10/79. The Vermont Department of Corrections (DOC) is responsible for maintaining safety, security, and order at the correctional facilities and providing programs of treatment and rehabilitation for inmates. Publications that contain depictions of nudity or sexually explicit images interfere with its ability to maintain safe, secure, and orderly correctional facilities and to rehabilitate and treat inmates. The purpose of this rule is to establish standards for DOC staff to determine whether inmates shall be denied access to publications because they interfere with DOC's ability to maintain safe, secure, and orderly correctional facilities and to rehabilitate and treat inmates.

Section 3. Applicability/Accessibility.

All individuals and groups affected by the operations of the Vermont Department of Corrections may have access to this administrative rule.

Section 4. Definitions.

Commercially Published Information or Material: Any book, booklet, pamphlet, magazine, periodical, newsletter, photograph or other pictorial depiction, or similar document, including stationery and greeting cards, published by any individual, organization, company, or corporation, which is distributed or made available through any means or media for a commercial purpose. This definition includes any portion extracted, photocopied, or clipped from such items.

Contraband: An item used by an inmate in an unauthorized or prohibited manner or altered in any way; property in excess of allowable property limits; any item that an inmate, staff person, volunteer, or contractor is not specifically authorized to have in their possession in a correctional facility, and/or anything that can pose a danger or risk to the safety and security of staff, the

1 facility, or public.

2
3 Department: The Department of Corrections.

4
5 Features:

6
7 1) In the case of an individually produced drawing or picture, the material contains depictions of
8 nudity or sexually explicit conduct as a primary element; or

9
10 2) In the case of a commercial publication, the material contains depictions of nudity or sexually
11 explicit conduct on a routine or regular basis, or promotes itself based upon such depictions in
12 the case of individual one-time issues. Printed materials containing nudity illustrative of medical,
13 educational, or anthropological content may be excluded from this definition.

14
15 Nudity: A As used in this rule “nudity” means a pictorial depiction where buttocks, genitalia, or
16 the areola or nipple of female breasts, are exposed.

17
18 Printed Materials: Written materials containing words and/or pictorial representations, regardless
19 of the medium on which the information is recorded or how the information is recorded, whether
20 manually or mechanically.

21
22 Publication: A As used in this rule, “publication” means a book, booklet, pamphlet, or similar
23 document, or a single issue of a magazine, periodical, newsletter, newspaper, plus such other
24 materials addressed to a specific inmate such as advertising brochures, flyers, and catalogs.

25
26 Sexually Explicit: A As used in this rule, “sexually explicit” means a pictorial depiction of actual
27 or simulated sexual acts, including sexual intercourse, oral sex, or masturbation. Written
28 descriptions of sexual acts are not sexually explicit.

29
30 Section 5. Policy.

31
32 a. Sexually Explicit Materials

33
34 Printed material that features nudity or sexually explicit pictures is contraband. Inmates may not
35 possess printed material which is sexually explicit or features nudity. When such material enters
36 a facility, staff shall provide the inmate recipient with written notice that the material is
37 contraband. After the inmate has exhausted his/her administrative remedies, the Facilities
38 Executive, or designee, shall return the information or material to the publisher or sender, if
39 reasonably possible. The Facilities Executive, or designee, shall advise the publisher or sender
40 that an independent review of the decision may be obtained by writing to the Facilities Executive
41 within 20 calendar days of receipt of the notification letter.

42
43 If printed material featuring nudity or sexually explicit pictures is found inside a facility, the
44 Facilities Executive, or designee, shall confiscate the material. When possible, such printed

1 material shall be returned to the publisher or sender with an explanation of the procedure for
2 obtaining an independent review as described above. When such printed material is found inside
3 a facility, written notice of the confiscation shall be provided to the inmate, unless the rightful
4 owner of the material cannot be determined through reasonable means.

5
6 Inmates may grieve the rejection or confiscation of material pursuant to this section through the
7 Department grievance process. Staff shall dispose of confiscated material in a manner that
8 ensures it will not reenter the facility

9
10 ~~b. Restriction on Inmate Access To Publications~~

11
12 ~~i. Access to Publications~~

13
14 At all facilities, an inmate may receive publications and newspapers only from the publisher,
15 from a book club, or from a bookstore, except that an inmate may directly receive:

16
17 a) Educational materials as authorized by a teacher assigned to the facility Education Department
18 in relation to a course or coursework in which the inmate is enrolled;

19
20 b) Religious publications provided by an approved Religious Volunteer or an approved Faith
21 Representative (see Administrative Directive on Religious Observance, #380.01);

22
23 c) Legal texts and publications approved by request to the Facilities Executive or designee;

24
25 d) Legal materials as authorized by the Director of Legal Education.

26
27 ~~ii. Receipt of Publications~~

28
29 Requests for orders of books, magazines, newspapers, or periodicals will be made through a
30 supervisor or caseworker designated by the Facility Superintendent. Before approving a specific
31 request, the designated staff person will determine:

32
33 a) That the inmate is able to pay for the desired materials;

34
35 b) That the inmate will be at the facility long enough to receive the publication; and

36
37 c) That the requested materials otherwise meet the requirements of this administrative rule.

38
39 Family members and friends of an inmate may order publications for a specific inmate provided
40 that:

41
42 a) The publication is mailed directly from the publisher or commercial distributor;

43
44 b) The publication meets the requirements of this rule;

e) Publications are not ordered as "Cash on Delivery (COD)" or "Bill Me Later" and charged to the inmate; and

d) The publication has not been banned pursuant to Section 5.B.iii. of this rule.

Department staff members, other than as identified under Access to Publications, are prohibited from providing inmates with publications of any type.

iii. Disapproved Publications

The Facilities Executive, or designee, may reject a publication only if it is determined detrimental to the security, good order, or discipline of the institution, or if it might facilitate criminal activity. The Facilities Executive may not reject a publication solely because its content is religious, philosophical, political, social, or sexual, or because its content is unpopular or repugnant. Publications which may be rejected include, but are not limited to, publications which meet one of the following criteria:

a) It depicts or describes procedures for the construction or use of weapons, ammunition, bombs or incendiary devices;

b) It depicts, encourages, or describes methods of escape from correctional facilities, or contains blueprints, drawings, or similar descriptions of correctional facilities;

c) It depicts or describes procedures for the brewing of alcoholic beverages or the manufacture of drugs;

d) It is written in code;

e) It depicts, describes or encourages activities which may lead to the use of physical violence or group disruption;

f) It encourages or instructs in the commission of criminal activity;

g) It is defined as contraband under Section 5a of this rule.

The Facilities Executive, or designee, may not establish an excluded list of publications that is not based on individual review of each publication. This means the Facilities Executive shall review the individual publication prior to the rejection of that publication. Rejection of several issues of a subscription publication is not sufficient reason to reject the subscription publication in its entirety.

Any publication that contains one (1) or more sections meeting the above criteria must be disapproved in its entirety. Facility staff may not alter the publication by removing the prohibited

1 section(s).

2
3 ~~Where a publication is found unacceptable, the Facilities Executive, or designee, shall promptly~~
4 ~~advise the inmate in writing of the decision and the reasons for it. The notice must contain~~
5 ~~reference to the specific article(s) or material(s) considered objectionable. The Facilities~~
6 ~~Executive, or designee, shall permit the inmate an opportunity to review this material for~~
7 ~~purposes of filing a grievance unless such review may provide the inmate with information of a~~
8 ~~nature which is deemed to pose a threat or detriment to the security of the institution or to~~
9 ~~encourage or instruct in criminal activity.~~

10
11 ~~The Facilities Executive, or designee, shall provide the publisher or sender of an unacceptable~~
12 ~~publication a copy of the rejection form/letter, when reasonably possible. The Facilities~~
13 ~~Executive, or designee, shall advise the publisher or sender that they may obtain an independent~~
14 ~~review of the rejection by writing to the Facilities Executive within 20 calendar days of receipt of~~
15 ~~the rejection form/letter. The Facilities Executive, or designee, shall dispose of the publication in~~
16 ~~accordance with applicable Department policies at the expiration of the review period or upon~~
17 ~~final adjudication.~~

18
19 Section 6. Amendment.

20
21 ~~The language in the APA Rule #79-25 MAIL is amended.~~

22
23 **GENERAL PUBLICATION GUIDELINES**

24
25 DOC staff shall not provide inmates with personally-acquired publications of any type.

26
27 Inmates may request and have access to magazines, newspapers, softcover books, and other
28 publications sent directly from publishers or commercial distributors. In addition, inmates may
29 receive:

- 30 1. Educational materials, as authorized by a staff member of the Community High School of
31 Vermont (CHSVT), related to a course or coursework in which the inmate is enrolled;
32 2. Religious publications provided by the facility Volunteer Services Coordinator (VSC) or an
33 approved representative of an inmate's faith;
34 3. Legal texts and publications approved by request to the Superintendent or designee; and
35 4. Legal materials, as authorized by the Legal Education Director.

36
37 Inmates shall not be permitted to have hardcover books, with the exception of educational texts.

38
39 **ORDERING PUBLICATIONS**

40
41 Inmates may access publications by making a written request or by having family or friends
42 order them.

- 43 1. Inmate requests to order a publication may be denied in cases when:
44 a. The inmate is not able to pay for the desired materials;

- b. The inmate is not expected to be housed at the facility long enough to receive the publication; or
- c. The requested materials are prohibited by this Rule.
2. Family or friends may order publications for an inmate only if:
 - a. The publication is mailed directly from the publisher or commercial distributor;
 - b. The publication is not prohibited by this Rule; and
 - c. The publication is not ordered using a "Cash on Delivery (COD)" or "Bill Me Later" option charged to the inmate.

PROHIBITED PUBLICATIONS

The DOC prohibits publications that: pose a threat to the safety, security, or orderly operation of the correctional facility; might facilitate criminal activity; or contain nudity or sexually explicit material.

Guidelines for Reviewing Publications

All publications sent directly to inmates from publishers or commercial distributors shall be reviewed by a staff member to identify prohibited content. The following guidelines shall be used when determining if a publication should be prohibited:

1. The DOC shall not reject a publication solely because its content is religious, philosophical, political, social, sexual, or unpopular or repugnant.
 - a. Each issue of a publication shall be reviewed individually.
 - b. No publication shall be prohibited without review.
2. The DOC may reject a publication only if it determines it will interfere with the safety, security, or orderly operation of the correctional facility, or if it might facilitate criminal activity. Publications may be rejected if they meet one of the following criteria:
 - a. It depicts or describes procedures for the construction or use of weapons, ammunition, bombs, or incendiary devices;
 - b. It depicts, encourages, or describes methods of escape from correctional facilities, or contains blueprints, drawings, or similar descriptions or depictions of correctional facilities;
 - c. It depicts or describes procedures for the brewing of alcoholic beverages or the manufacture of drugs;
 - d. It is written in code;
 - e. It depicts, describes or encourages activities which may lead to the use of physical violence or group disruption;
 - f. It encourages or provides instruction for the commission of criminal activity;
 - g. It depicts nudity or sexually explicit material; or
 - i. Medical, educational, or anthropological materials do not violate this restriction and may be permitted.
 - ii. Materials from gay, lesbian, bisexual, or transgender rights organizations that do not depict nudity or sexually explicit material do not violate this restriction and may be permitted.

- 1 iii. Written descriptions of sexual acts do not violate this restriction.
- 2 h. Its content will interfere with the safety, security, or orderly operation of the correctional
- 3 facility.
- 4 3. When reviewing religious materials, staff shall refer to the DOC administrative directive on
- 5 religious services.
- 6 4. The DOC shall establish a review and appeals process for the disapproval of publications.
- 7 This process shall require the DOC to notify the inmate and publisher whenever a publication
- 8 is disapproved.
- 9 a. These notifications shall include an explanation of why the publication was disapproved.
- 10 b. The notification to the publisher shall inform the publisher that they may appeal the
- 11 decision to the Superintendent or designee.
- 12
- 13

14 **HISTORY:** STATUTORY AUTHORITY: ~~28 V.S.A. §§ 101, 102, 802~~

15
16 **EFFECTIVE DATE:** ~~January 10, 1979 Secretary of State Rule Log #79-25~~

17 -
18 **AMENDED:** ~~August 4, 2010 Secretary of State Rule Log #10-029~~



INTERAGENCY COMMITTEE ON ADMINISTRATIVE RULES (ICAR) MINUTES

Meeting Date/Location: February 12, 2018, Pavilion Building, 5th floor conference room, 109 State Street, Montpelier, VT 05609

Members Present: Chair Brad Ferland, Dirk Anderson, Diane Bothfeld, John Kessler, Jen Duggan, and Steve Knudson

Members Absent: Clare O'Shaughnessy, Karen Songhurst and Ashley Berliner

Minutes By: Melissa Mazza-Paquette

- 2:05 p.m. meeting called to order, welcome and introductions.
- Review and approval of minutes from the January 8, 2018 meeting.
 - Motion made to accept the minutes by Diane Bothfeld, seconded by John Kessler, and passed unanimously.
- Additions/deletions to agenda.
 - #6 on the agenda: Vital Records Rule, Agency of Human Services, Department of Health, is being moved to the March 12, 2018 meeting per their request.
 - Member Kessler requested to add an update from Chair Ferland on Administrative Procedures Act discussion in House Government Operations on February 1, 2018 at 2:30 p.m. Discussion to take place after proposed rules have been heard.
 - Motion made to accept agenda with changes by Diane Bothfeld, seconded by John Kessler, and passed unanimously.
- No public comments made.
- Presentation of Proposed Rules on pages 2-6 to follow:
 1. Required Agricultural Practices Rule for The Agricultural Nonpoint Source Pollution Control Program, The Vermont Agency of Agriculture, Food and Markets, page 2
 2. Fire Safety and Prevention, Agency of Human Services, Department of Corrections, page 3
 3. Inmate Access to Publications, Agency of Human Services, Department of Corrections, page 4
 4. Inmate Mail, Agency of Human Services, Department of Corrections, page 5
 5. Regulations Governing the Operation of Woodside Juvenile Rehabilitation Center, Agency of Human Services, Department for Children and Families, Family Services Division, page 6
 6. Vital Records Rule, Agency of Human Services, Department of Health (moved to the agenda for the March 12, 2018 meeting)
- 2:58 p.m. Diane Bothfeld left the meeting prior to hearing proposed rule #5.
- Update from Chair Ferland on Administrative Procedures Act discussion in House Government Operations on February 1, 2018 at 2:30 p.m.
- Next scheduled meeting is March 12, 2018 at 2:00 p.m.
- Motion made to adjourn by John Kessler, seconded by Dirk Anderson, and passed unanimously.
- 3:17 p.m. meeting adjourned.

Proposed Rule: Inmate Access to Publications, Agency of Human Services, Department of Corrections

Presented by Matthew Nault and Christine Cowart (Gary Dillion in attendance)

Motion made to accept the rule by Jen Duggan, seconded by Dirk Anderson, and passed unanimously, with the following recommendations:

1. Proposed Rule Coversheet, page 3, #7 and #8: Include 'and renaming' after the word 'revision'.
2. Proposed Rule Coversheet, page 3, #10: Include a brief summary of the economic impact.
3. Public Input Statement, #4: Consider reaching out to the prisoner's rights office.
4. Annotated Text, page 1, lines 18 and 19: Replace 'to maintain' with 'for maintaining' and 'provide' with 'providing'.
5. Annotated Text, page 6, #2 (b): Reformat and complete sentence.